

_____ BILL NO. _____

INTRODUCED BY _____

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO CONTRIBUTIONS MADE TO A QUALIFIED TUITION PROGRAM; ALLOWING A PERSON TO CONTRIBUTE TO A QUALIFIED TUITION PROGRAM THROUGH AN OUT-OF-STATE FINANCIAL INSTITUTION; ESTABLISHING REPORTING REQUIREMENTS FOR AN OUT-OF-STATE FINANCIAL INSTITUTION; PROVIDING THAT CONTRIBUTIONS MADE TO A QUALIFIED TUITION PROGRAM IN ANOTHER STATE AND CONTRIBUTIONS AND EARNINGS WITHDRAWN FROM A QUALIFIED TUITION PROGRAM IN ANOTHER STATE ARE EXCLUDED FROM MONTANA ADJUSTED GROSS INCOME; PROVIDING THAT NONQUALIFIED WITHDRAWALS OF AMOUNTS IN A QUALIFIED TUITION PROGRAM IN ANOTHER STATE ARE SUBJECT TO THE RECAPTURE TAX; AMENDING SECTIONS 15-30-111, 15-62-103, 15-62-201, 15-62-207, AND 15-62-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

1 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
2 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

3 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
4 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
5 of the same estate or trust for the same tax period; and

6 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
7 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
8 gross income.

9 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
10 include the following, which are exempt from taxation under this chapter:

11 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
12 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
13 from taxation by Montana under federal law;

14 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
15 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

16 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
17 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

18 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
19 received as defined in 15-30-101;

20 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

21 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
22 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
23 excess of \$30,000 as shown on the taxpayer's return;

24 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
25 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
26 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
27 as shown on their joint return;

28 (d) all Montana income tax refunds or tax refund credits;

29 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

30 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section

3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or from a qualified tuition program allowed under section 529 of the Internal Revenue Code, 26 U.S.C. 529, in another state or earnings withdrawn from a family education savings account or from a qualified tuition program in another state for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or

1 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

2 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

3 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
4 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
5 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
6 is effective.

7 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
8 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
9 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
10 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
11 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
12 be made to determine the amount of income or loss of the partnership or small business corporation.

13 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
14 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
15 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
16 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
17 Montana return.

18 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
19 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
20 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
21 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
22 must be split equally on each return.

23 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
24 who file separate Montana income tax returns are not required to recompute allowable passive losses according
25 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
26 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
27 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

28 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
29 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
30 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is

1 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

2 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
3 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
4 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
5 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
6 gross income.

7 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
8 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
9 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
10 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
11 income.

12 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
13 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
14 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
15 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
16 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
17 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
18 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
19 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
20 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
21 or expected to last at least 12 months.

22 (11) An individual who contributes to one or more accounts established under the Montana family
23 education savings program or to one or more accounts under a qualified tuition program allowed under section
24 529 of the Internal Revenue Code, 26 U.S.C. 529, in another state may reduce adjusted gross income by the
25 lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to
26 a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to
27 treat half of the total contributions made by the spouses as being made by each spouse. The reduction in
28 adjusted gross income under this subsection applies only with respect to contributions to an account of which the
29 account owner, as defined in 15-62-103, or the owner of an account under a qualified tuition program in another
30 state is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild

1 is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of
2 contributions that reduced adjusted gross income.

3 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
4 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

5 (i) is a health care professional licensed in Montana as provided in Title 37;

6 (ii) is serving a significant portion of a designated geographic area, special population, or facility
7 population in a federally designated health professional shortage area, a medically underserved area or
8 population, or a federal nursing shortage county as determined by the secretary of health and human services
9 or by the governor;

10 (iii) has had a student loan incurred as a result of health-related education; and

11 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
12 program described in subsection (12)(b) as an incentive to practice in Montana.

13 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or
14 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
15 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
16 as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch.
17 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

18
19 **Section 2.** Section 15-62-103, MCA, is amended to read:

20 **"15-62-103. Definitions.** As used in this chapter, the following definitions apply:

21 (1) "Account" means an individual participating trust account established under this chapter.

22 (2) "Account owner" means the person who enters into a participating trust agreement and who is
23 designated at the time that an account is opened as having the right to withdraw money from the account before
24 the account is disbursed to or for the benefit of the designated beneficiary.

25 (3) "Board" means the board of regents of higher education established by Article X, section 9,
26 subsection (2), of the Montana constitution and 2-15-1505.

27 (4) "Committee" means the family education savings program oversight committee established in
28 20-25-901.

29 (5) "Designated beneficiary" means, with respect to an account, the person designated at the time that
30 the account is opened as the person whose higher education expenses are expected to be paid from the account

1 or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated
2 beneficiary.

3 (6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and
4 loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that
5 is authorized to do business in this state.

6 (7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5)
7 of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

8 (8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed
9 or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

10 (9) "Member of the family" means, with respect to a designated beneficiary, a member of the family of
11 the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

12 (10) "Nonqualified withdrawal" means a withdrawal from an account that is not:

13 (a) a qualified withdrawal;

14 (b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

15 (c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in
16 section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is
17 received by the designated beneficiary; or

18 (d) a rollover or change of designated beneficiary described in 15-62-202.

19 (11) "Out-of-state financial institution" means a bank, commercial bank, national bank, savings bank,
20 savings and loan association, credit union, insurance company, trust company, investment adviser, or other
21 similar entity that is authorized to do business in this state and in another state for the purposes of establishing
22 an account for a person in a qualified tuition program allowed under section 529 of the Internal Revenue Code,
23 26 U.S.C. 529, and who holds the account in another state.

24 ~~(11)(12)~~ "Participating trust agreement" means an agreement between the board, as trustee and as
25 administrator of the program, and the account owner that creates a trust interest in the trust and provides for
26 participation in the program.

27 ~~(12)(13)~~ "Program" means the family education savings program established pursuant to 15-62-201. The
28 program must be structured to permit the long-term accumulation of savings that can be used to finance all or
29 a share of the costs of higher education.

30 ~~(13)(14)~~ "Qualified higher education expenses" means qualified higher education expenses as defined

1 in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

2 ~~(14)~~(15) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education
3 expenses of the designated beneficiary of the account.

4 ~~(15)~~(16) "Trust" means the family education savings trust established by 15-62-301.

5 ~~(16)~~(17) "Trustee" means the board in its capacity as trustee of the trust.

6 ~~(17)~~(18) "Trust interest" means an account owner's interest in the trust created by a participating trust
7 agreement and held for the benefit of a designated beneficiary."

8
9 **Section 3.** Section 15-62-201, MCA, is amended to read:

10 **"15-62-201. Program requirements -- application -- establishment of account -- qualified and**
11 **nonqualified withdrawal -- penalties.** (1) The program must be operated through use of accounts in the trust
12 established by account owners. Payments to the trust for participation in the program must be made by account
13 owners pursuant to participating trust agreements. A person who wishes to participate in the program and open
14 an account into which funds will be deposited to pay the qualified higher education expenses of a designated
15 beneficiary shall:

16 (a) enter into a participating trust agreement pursuant to which an account will be established as a
17 participating trust of the trust;

18 (b) complete an application on the form prescribed by the board that includes:

19 (i) the name, address, and social security number or employer identification number of the contributor;

20 (ii) the name, address, and social security number of the account owner if the account owner is not the
21 contributor;

22 (iii) the name, address, and social security number of the designated beneficiary;

23 (iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902;

24 (v) the designation of the financial institution with which the funds in the participating trust will be
25 invested; and

26 (vi) any other information required by the board;

27 (c) pay the one-time application fee established by the board;

28 (d) make the minimum contribution required by the board or by opening an account; and

29 (e) designate the type of account to be opened if more than one type of account is offered.

30 (2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for the board or program manager to make that determination. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty imposed under subsection (4)

1 is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be
2 withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

3 (a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal
4 and state income tax return for the taxable year of the withdrawal; or

5 (b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for
6 federal and state income tax returns, including any authorized extensions.

7 (8) Each account must be maintained separately from each other account under the program.

8 (9) Separate records and accounting must be maintained for each account for each designated
9 beneficiary.

10 (10) A contributor to, account owner of, or designated beneficiary of an account may not direct the
11 investment of any contributions to any account or the earnings generated by the account in violation of section
12 529 of the Internal Revenue Code, 26 U.S.C. 529, and may not pledge the interest of an account or use an
13 interest in an account as security for a loan.

14 (11) If there is any distribution from an account to any person or for the benefit of any person during a
15 calendar year, the distribution must be reported to the internal revenue service and the account owner or the
16 designated beneficiary to the extent required by federal law.

17 (12) (a) The financial institution shall provide statements to each account owner whose participating trusts
18 are invested with the institution at least once each year within 31 days after the 12-month period to which they
19 relate. The statement must identify the contributions made during a preceding 12-month period, the total
20 contributions made through the end of the period, the value of the account as of the end of this period,
21 distributions made during this period, and any other matters that the board requires be reported to the account
22 owner.

23 (b) An in-state branch of an out-of-state financial institution shall provide statements to each owner of an
24 account in a qualified tuition program in another state whose contributions are invested with the institution at least
25 once each year within 31 days after the 12-month period to which the contributions relate. The statement must
26 identify the contributions made during a preceding 12-month period, the total contributions made through the end
27 of the period, the value of the account as of the end of this period, distributions made during this period, and any
28 other matters that the board requires be reported to the owner of an account in another state.

29 (13) Statements and information returns relating to accounts, including accounts established by an
30 out-of-state financial institution, must be prepared and filed to the extent required by federal or state tax law or

1 by administrative rule.

2 (14) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue
3 Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account
4 owner of an account to fund scholarships for persons whose identity will be determined after an account is
5 opened."

6
7 **Section 4.** Section 15-62-207, MCA, is amended to read:

8 **"15-62-207. Deductions for contributions.** An individual who contributes to one or more accounts in
9 a tax year under the family education savings program established under this chapter or to one or more accounts
10 of a qualified tuition program allowed under section 529 of the Internal Revenue Code, 26 U.S.C. 529, in another
11 state is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(11), by the total
12 amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned by
13 the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild
14 is a Montana resident."

15
16 **Section 5.** Section 15-62-208, MCA, is amended to read:

17 **"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at
18 a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts from the
19 family education savings program or from a qualified tuition program in another state that reduced adjusted gross
20 income under 15-30-111(11).

21 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross
22 income, all withdrawals must be allocated between income and contributions in accordance with the principles
23 applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion
24 of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions,
25 if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions
26 that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must
27 be treated as first derived from contributions that reduced adjusted gross income, to the extent of the
28 contributions, and then to contributions that did not reduce adjusted gross income.

29 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the
30 withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account

owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

— (a) April 30, 2001; or

— (b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

- END -